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Letter dated 17 May 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Jamaica, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-39586 (E) 280502

Annex

Letter dated 15 May 2002 from the Permanent Representative of Jamaica addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In accordance with instructions from my Government, I have the honour to enclose herewith, pursuant to paragraph 6 of Security Council resolution 1373 (2001), Jamaica's report, along with pertinent annexes, to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (see enclosure).

The Government of Jamaica stands ready to provide the Committee with further reports or information, as necessary, or if so requested by the Committee.

(*Signed*) M. Patricia **Durrant**
Ambassador
Permanent Representative

Enclosure

Report of the Government of Jamaica* to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

I. INTRODUCTION

Jamaica reaffirms its commitment to cooperate fully with the international community in the fight against terrorism, in accordance with international law. Jamaica supports Security Council resolutions 1368 (2001) and 1373 (2001) which reaffirm the aims and objectives of resolution 1269 (1999) to tackle the threat of terrorism through international cooperation and to mandatorily restrict the financing of terrorist activities globally.

Jamaica submitted its preliminary report in December 2001 on its implementation of Security Council resolution 1373 (2001) to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism.

Jamaica is party to four of the twelve multilateral conventions and protocols related to States' responsibilities for combating terrorism and is considering adherence to the remaining eight anti-terrorism instruments, as well as domestic legislation for their implementation.

At the national level, Jamaica has strengthened security at all ports of entry and the national airline has tightened security procedures. The Bank of Jamaica regularly updates the financial sector on the lists of persons, groups, or organizations which support terrorism, as issued by the Security Council. To date, investigations have revealed no assets belonging to any listed party.

The Government has held consultations with the business community and other stakeholders, and considered the impact of the terrorist attacks on the Jamaican economy, particularly the tourism sector. Consideration was also given to the level of Government support required to maintain economic stability.

Regionally, Jamaica is committed to the efforts of the Caribbean Community (CARICOM) and the Organization of American States (OAS) to cooperate in counter-terrorism. Jamaica supports the Plan of Action on Hemispheric Cooperation to Prevent, Combat and Eliminate Terrorism initiated by the OAS in 1996, and the commitment of the Second Inter-American Specialized Conference held in November 1998. Jamaica is currently participating in negotiations to elaborate another OAS Anti-Terrorism Convention.

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* The annexes are on file with the Secretariat and are available for consultation.

In recognition of the link between terrorism and organized crime, Jamaica and other CARICOM states signed the International Convention Against Transnational Organized Crime on 26 September, 2001. Jamaica also signed the Protocol Against the Illicit Manufacture of and Trafficking in Firearms, Their Parts and Components and Ammunition on November 14, 2001.

Following the September 11, 2001, terrorist attacks in the USA, CARICOM Heads of Government held an Emergency Session in the Bahamas and issued the Nassau Declaration on Terrorism which agreed to actions to be implemented to counter terrorism.

Jamaica joined other Commonwealth countries in issuing a Commonwealth statement on international terrorism and in agreeing to measures to cooperate in the international fight against terrorism. Together with other states of the Commonwealth, Jamaica participated in the adoption of a Plan of Action Against Terrorism at the meeting of the Commonwealth Heads of Government held in March 2002.

II. IMPLEMENTATION

Operative paragraph 1

Sub-paragraph (a) – What measures, if any, have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d)?

1. The Government of Jamaica is fully committed to using all available resources as well as enhancing its capacity to prevent and suppress financing of any terrorist activity of which it is aware. Currently, the financing of terrorist activities is not a criminal offence and there is no specific legislation dealing with terrorism and terrorist offences. However, offences which lead to injury, loss of life or damage to property are punishable by common law or by statute. The Offences Against the Persons Act deals with injury to persons, including murder. The Act does make reference to terrorism in section 2(f), which refers to murder in the course of or furtherance of an act of terrorism. This definition will, however, have to be amended.

2. The Malicious Destruction of Property Act is being examined with a view to amendment in order to implement aspects of the Convention Against the Suppression of Terrorist Bombing.

3. Since the signature of the Convention for the Suppression of Terrorist Financing by Jamaica on November 11, 2001, Jamaica has been identifying a set of measures to be taken to implement this Convention. To this end, an Inter-Ministerial Committee on Anti-Terrorism measures was established, chaired by the Ministry of National Security

and comprising representatives of all government legal departments, several key ministries, the Director of Public Prosecutions and the Bank of Jamaica. A Legal Sub-Committee has been examining all the United Nations anti-terrorism instruments, identifying the legislative action which is required for their implementation.

4. Several pieces of legislation have been identified as critical for this process. They include the Money Laundering Act, the Drug Offences (Forfeiture of Proceeds) Act, the Extradition Act, the Mutual Legal Assistance (Criminal Matters) Act.

5. The stated intention of the Government is to develop a framework of legislation and administrative measures to comprehensively address terrorist activity, and engage in international cooperation in this fight. This will include an omnibus terrorism act, the text of which is still under consideration.

6. The financial sector in Jamaica developed rapidly from the 1970s onward, as part of the effort to diversify the Jamaican economy. Efforts at regulation of this sector have intensified over time to ensure prudent, sound and effective management of operations. Part of this effort has always been to prevent the occurrence of money laundering and other illicit activities.

7. The independent regulatory framework which now exists is the result of past experience, advice from international consultants and donors, and the commitment of the Government to ensure that only the highest international standards apply in the sector.

8. The Bank of Jamaica, as the central bank, is responsible for regulating financial institutions, with relation to the Money Laundering Act, in particular. The Bank is charged under that Act with issuing guidelines as to operation and procedures to prevent money laundering activities. The Bank of Jamaica is responsible for carrying out regular inspections of these institutions.

Sub-paragraph (b) – What are the offences and penalties in your country with respect to activities listed in this sub-paragraph?

9. The Money Laundering Act (1996) deals with prevention and control of money laundering and the proceeds of crime. Predicate offences covered by the Act include drug offences, firearms offences and any offence involving fraud, corruption and dishonesty. This Act does not cover terrorism financing, but is a base which can be built upon to implement this obligation, and is being considered in this light for possible amendment. Section 2 of the Act allows the Schedule of "specified" or predicate offences to be amended by the Minister, subject to affirmative resolution.

10. The penalties under the Act range from a fine of J$1m or five (5) years imprisonment, to a maximum of twenty (20) years imprisonment. Where the Bank of Jamaica finds that money laundering guidelines are not being implemented, it can take action against the offending institution, including the suspension of its licence to operate.

Sub-paragraph (c) – What legislation and procedures exist for freezing funds and other financial or economic assets of persons committing terrorist acts or entities owned or controlled by such persons?

11. The only provision relating to the freezing, restraining, forfeiture and seizure of assets for criminal offences applies to drug related offences, under the Drug Offences (Forfeiture of Proceeds) Act. The scope of the Act will therefore have to be extended to implement this obligation, with an attendant change in title.

12. It should be noted that the Act in its present form can only operate where a person has at least been charged with an offence, in which case the assets can be frozen pending the outcome of the trial. This is consistent with constitutional rights in Jamaica. The Constitution does not allow for civil forfeiture. In addition, it is likely that an attempt to freeze the assets of someone who has not been charged with an offence in Jamaica, would not succeed in Jamaican courts. This, again, is due to constitutional guarantees.

13. Therefore, the apparent requirement that the assets of persons be frozen on the basis of their inclusion in a list issued by the Security Council raises questions of, *inter alia*, fundamental constitutional rights and due process.

Sub-paragraph (d) – What measures, if any, have been taken to prohibit nationals and other persons in your country from making funds, financial assets or economic resources or financial or other related services available to benefit persons committing terrorist acts or to entities owned or controlled by these persons?

14. Please refer to paragraph 9 which deals with the Money Laundering Act. This Act also penalizes conspiracy and aiding and abetting money laundering offences. Section 6 imposes a duty on financial institutions to report suspicious transactions.

15. Additional legislative measures are under consideration.

Operative paragraph 2

<u>Sub-paragraph (a)</u> - What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country to prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

16. The Government of Jamaica has sought to improve the ability of the police to obtain intelligence regarding criminal activities through legislation such as the Bill on the Interception of Communication, which is now before the Senate (Upper House).

17. There is no evidence that Jamaica has been used as a base for the recruitment of terrorists. A long-standing concern does exist, however, about the use of the country as a trans-shipment point for narcotics and the connection with trans-border narco-traffickers. These persons engage in activities which can be described as *'narco-terrorism'* because of the effects of the illicit activities on this society and others.

18. There is no right to bear arms in Jamaica. Possession of a firearm without a licence is an offence with penalties ranging from five (5) years to life. Under the Firearms Act, the import, export, transshipment, sale and ownership of firearms and ammunition are regulated. Dealers in firearms are also registered and controlled under this Act.

19. In order for a private citizen to obtain a firearm licence, he/she must show that he/she can be permitted to have the firearm in his/her possession without danger to the public's safety or peace; that he/she is proficient in the use and management of the firearm in question, and has made suitable arrangements to keep it in a secure place when it is not being carried.

20. Jamaica does not manufacture weapons, ammunition or other weapons of destruction. The country has signed the 1997 Inter-American Convention Against Illicit Manufacture and Trafficking in Weapons, Munitions, Explosives and Related Materials, as well as the Protocol to the United Nations Convention on Transnational Organized Crime on the Illicit Manufacture, Sale and Trafficking in Weapons. Steps are now being taken to ratify and implement both Conventions.

Sub-paragraph (b) – What other steps are being taken to prevent the commission of terrorist acts and, in particular, what early warning mechanisms exist to allow the exchange of information with other states?

21. Jamaica has in place an extensive network of arrangements for cooperation in crime fighting. The Mutual Legal Assistance (Criminal Matters) Act allows Jamaica to provide a wide range of assistance, including information about acts contemplated by this sub-paragraph to foreign states with which Jamaica has bilateral arrangements, or specified Commonwealth countries.

22. In addition, the Jamaica Constabulary Force may provide "police-to-police" cooperation on a less formal basis, at the request of foreign states. Membership in regional or international organizations on security issues, e.g., INTERPOL, enhances the scope for such collaboration.

Sub-paragraph (c) - What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph?

23. Once the identity of such persons is known, action can be taken to bar their entry into Jamaica or have them removed. This would be done on the basis that such a person represents a threat to national security or that their presence is not conducive to the public good. The relevant legislation is the Immigration Restriction (Commonwealth Citizens) Act and the Aliens Act. Under the Aliens Act -- Sections 5 and 6 – the Minister can issue an Order to prevent persons from landing in Jamaica. Deportation Orders can be issued under Section 15. In addition, these persons could be extradited under the Extradition Act, once terrorist offences are covered.

Sub-paragraph (d) – What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens?

24. Once a person has been identified as being involved in terrorist activities, he/she would be subject to deportation or extradition if a request has been made by another state. Additional legislation is under consideration.

Sub-paragraph (e) – What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts?

25. Jamaica interprets the phrase "brought to justice" to mean either prosecute the individual or extradite them to a country where they will be tried according to law (including international human rights obligations). As was noted in paragraph 1 of this report, Jamaica currently has no legislation specifically dealing with terrorism. Therefore, persons could only be tried under existing legislation dealing with offences against life and property, which carry major penalties, if there is severe injury, loss of life or major property damage. In the process of implementing the twelve (12) United Nations anti-terrorism Conventions, Jamaica will ensure that legislation takes into account the obligations therein.

Sub-paragraph (f) – What procedures and mechanisms are in place to assist other states?

26. This question has been addressed in paragraph 21. However, information on actions/activities taken by Jamaica is made available to other states upon request.

Sub-paragraph (g) – How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery, etc.?

27. Entry into Jamaica is controlled by the Aliens Act and the Immigration Restriction (Commonwealth Citizens) Act, as the law distinguishes between non-Commonwealth citizens (aliens) and Commonwealth citizens. Visa requirements are determined by the Ministry of National Security. This list is regularly reviewed in light of factors such as security implications, incidents of fraudulent travel documents, etc. Generally, all visitors are required to have valid travel documents, including a return ticket for entry to Jamaica, preventing the movement of terrorist or terrorist groups by effective border control and controls on the issuance of identify papers and travel documents.

28. Since September 11, 2001, several efforts have been made with international assistance to upgrade security at all our ports of entry. In addition, the Jamaica Coast Guard is receiving assistance with equipment to enhance its ability to patrol our waters and prevent illegal entry into the island.

29. The Passport Act governs the issuing of passports and other travel documents. The Ministry of National Security through the Passport Office, in 2001, began to introduce machine-readable, tamper-proof passports into the system on a phased basis.

30. Passports and other travel documents are issued by the Passport Office and Diplomatic and Consular Missions abroad. Special arrangements are made to secure these documents, and the monitoring is done both by the Ministry of Foreign Affairs and Foreign Trade and by the Ministry of National Security.

31. The use of fraudulent travel documents and illegal entry into the country are criminal offences which will render individuals liable to a prison sentence and subsequent deportation.

Operative Paragraph 3

Sub-paragraph (a) – What steps are being taken to intensify the exchange of operational information on terrorist activities and cooperation indicated in this sub-paragraph?

32. Jamaica will continue to seek ways to strengthen the capacity of the relevant law enforcement agencies to exchange information on the areas identified. The willingness of the Government of Jamaica to participate in these exchanges is well established, and will continue.

Sub-paragraph (b) – What steps are being taken to exchange information in accordance with international and domestic law and for cooperation on administrative and judicial matters to prevent the commission of terrorist acts?

33. The obligations herein have been addressed in substance in response to paragraph 2(f).

Sub-paragraph (c) – What steps are being taken to cooperate, particularly through bilateral and multilateral arrangements, and agreements to prevent and suppress terrorist attacks and to take action against the perpetrators of such acts?

34. Jamaica, as a small island developing state, recognizes that the most effective method and, indeed, the only effective method of combating terrorist activities is through cooperation with bilateral and multilateral institutions. The United Nations is the most appropriate and representative forum for the development of the required framework to address the scourge of terrorism.

35. In addition to its participation in United Nations anti-terrorism initiatives, Jamaica also participates in the work of the OAS and the Commonwealth in responding to this issue. On the bilateral level, mutual legal assistance arrangements with the USA and Canada, in addition to pending negotiations with several Latin American states, show the level of interest in anti-terrorism measures.

36. Jamaica is also a member of the Caribbean Financial Action Task Force (CFATF) which is affiliated with the Financial Action Task Force (FATF). The latter body's recommendation on terrorist financing is now being reviewed for action as part of the larger legislative and administrative program of anti-terrorism measures for Jamaica.

Sub-paragraph (d) – What are your Government's intentions with regard to signing and/or ratifying or accession to international conventions against terrorism?

37. Jamaica has taken action with respect to the United Nations instruments as follows:

a) The Convention on Offences and Certain Acts Committed on Board Aircraft (1963) – ratified September 15, 1983;

b) The Convention for the Suppression of Unlawful Seizure of Aircraft (1970) – ratified September 15, 1983;

c) The Convention Against Unlawful Acts against the Safety of Civil Aviation (1971) – ratified September 15, 1983.

These three (3) Conventions are implemented by the Aircraft (Tokyo, Hague and Montreal) (Conventions) Act).

d) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973) – acceded to on September 21, 1978;

e) International Convention Against the Taking of Hostages (1979) – signed February 27, 1980;

f) The Convention for the Suppression of the Financing of Terrorism (1999) – signed November 2001.

38. As was stated in paragraph 1 of this report, the remaining instruments are being considered for implementation through legislative action.

Sub-paragraph (e) - What relevant information is available regarding the implementation of international conventions and protocols relating to terrorism and to Security Council resolutions 1269 (1999) and 1368 (2001)?

39. Action taken with regard to implementing the resolutions in the question has already been indicated. Please note the response to paragraph 3(d) concerning implementation of the conventions and protocols on terrorism.

Sub-paragraph (f) – What legislation, procedures and mechanisms exist in cases of the granting of refugee status to ensure that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts?

40. Jamaica is a party to the 1950 Convention on the Status of Refugees and to its 1967 Protocol. Currently, the policy concerning refugee determination is being reviewed. A specific framework to replace the existing ad hoc procedures is to be considered by Cabinet.

41. Applications for asylum are now heard by an Eligibility Committee consisting of representatives from three (3) Government agencies dealing with law, national security and foreign affairs. Determinations as to the grant of asylum are made in accordance with the Convention's provisions and UNHCR guidelines. Any indication that the applicant may have been involved in terrorist activities in any way automatically results in a refusal.

42. Jamaica regards the obligations herein as being consistent with the 1950 Convention, particularly with respect to article F.

Sub-paragraph (g) – What procedures are in place to ensure, in accordance with international law, that refugee status is not granted to perpetrators, organizers or facilitators of terrorist acts, and claims of political motivation are not recognized as grounds for refusing requests for the extradition of terrorists?

43. In the event that a person was granted refugee status and subsequently proved to have engaged in terrorist activities, their status would be revoked. This person would then become liable for extradition or deportation.

44. The Extradition Act in Section 7 specifically excludes from definition as a political offence, any extraditable offence created pursuant to a multilateral treaty, where the purpose of the treaty is to prevent or repress a specific category of offences. Therefore the defence of political motivation would not be open to a person under this Act.

45. *Technical Cooperation*

A complete estimation of the types of technical cooperation which Jamaica requires has not yet been made. A preliminary assessment is that assistance will be needed particularly with regard to training of personnel in several areas. One of these is the ability to detect suspicious transactions involving terrorist financing. Although Jamaica has been the beneficiary of assistance in relation to money laundering, more will be required to deal with the complex issues involved in detecting, investigating, monitoring and prosecuting these offences.

46. Access to information about developments, particularly legal developments, is also an area to be considered. In this regard, a database of implementing legislation of various countries, discussion and articles on constitutional and other issues would be useful. Limited human resources means that many man hours are spent in search of critical information needed for policy issues, creating a strain of the resources in general. Access to technology, both in terms of acquisition and maintenance for increasing border security and detecting fraudulent documents, is also required.

47. When the Inter-Ministerial Committee on Anti-Terrorism measures has completed its work, Jamaica will be able to make a more thorough assessment of our technical needs.

Annexes

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▪ The Aliens Act	I
▪ The Drug Offences (Forfeiture of Proceeds) Act	VII
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